IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4518 of 2003
With
CRIMINAL MISC.APPLICATION No. 4519 of 2003
With
CRIMINAL MISC.APPLICATION No. 4522 of 2003
With
CRIMINAL MISC.APPLICATION No. 4525 of 2003
With
CRIMINAL MISC.APPLICATION No. 6967 of 2003
With
CRIMINAL MISC.APPLICATION No. 7015 of 2003
With
CRIMINAL MISC.APPLICATION No. 7016 of 2003
With
CRIMINAL MISC.APPLICATION No. 7017 of 2003
With
CRIMINAL MISC.APPLICATION No. 7471 of 2003
With
CRIMINAL MISC.APPLICATION No. 7472 of 2003
With
CRIMINAL MISC.APPLICATION No. 7885 of 2003
With
CRIMINAL MISC.APPLICATION No. 2504 of 2004
With
CRIMINAL MISC.APPLICATION No. 2505 of 2004
With
CRIMINAL MISC.APPLICATION No. 2506 of 2004
With
CRIMINAL MISC.APPLICATION No. 2507 of 2004
With
CRIMINAL MISC.APPLICATION No. 2508 of 2004
With
CRIMINAL MISC.APPLICATION No. 2509 of 2004
With
CRIMINAL MISC.APPLICATION No. 5141 of 2004
With
CRIMINAL MISC.APPLICATION No. 9572 of 2004
With
CRIMINAL MISC.APPLICATION No. 9573 of 2004

With
CRIMINAL MISC.APPLICATION No. 9574 of 2004
With
CRIMINAL MISC.APPLICATION No. 1348 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GOPALBHAI R. PRAJAPATI - Applicants
Versus
PRATAPBHAI HAMIRBHAI BHEDE & 4 - Respondents

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Appearance :
MR KJ SHETHNA WITH MR RAMESH K SHAH for Petitioners.
MR PM THAKKAR, SENIOR ADVOCATE WITH MR HR PRAJAPATI for Respondents – Complainants.
MR AD OZA, PP WITH MR MUKESH A PATEL WITH MR H L JANI, APP for State of Gujarat.

2. Cri. Misc. Application No. 7885 of 2003

MR TS NANAVATI for petitioners.
MR PM THAKKAR, SENIOR ADVOCATE WITH MR HR PRAJAPATI for Respondents – Complainants.
MR AD OZA, PP WITH MR MUKESH A PATEL WITH MR H L JANI, APP for State of Gujarat.

3. Cri. Misc. Application No. 5141 of 2004
MR BB NAIK WITH MR DS VASAVADA for petitioners.
MR PM THAKKAR, SENIOR ADVOCATE WITH MR PJ BHATT WITH MR HR PRAJAPATI for Respondents – Complainants.
MR AD OZA, PP WITH MR MUKESH A PATEL WITH MR H L JANI, APP for State of Gujarat.
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/03/2006

COMMON ORAL JUDGMENT

1.All these Cri. Misc. Applications are filed by the petitioners – original accused, under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the respective complaints filed by the complainants in different Courts of learned Judicial Magistrate First Class in the State of Gujarat. Since common issue is raised and it is in respect of the same incident, all these

applications are heard together and disposed of, at the request of the learned advocates appearing for the respective parties, by this common judgment and order.

2.Cri. Misc. Application No. 4518 of 2003 is filed by the petitioner – original accused praying for quashing and setting aside the criminal Complaint No. 64/2003 filed by the complainant for the alleged offence under Sections 295-A, 504, 500 & 114 of I.P.C. in the Court of Judicial Magistrate First Class, Liliya. Similarly, the following are the details of other Cri. Misc. Applications challenging the complaints filed in the different Courts in the State of Gujarat.

Criminal Misc. Application No.	Name of Court	Criminal Case No.	Offence U/s.
4519/2003	JMFC, Una.	214/2003	295-A, 500, 504, 505, 506 (2), 508, 406, 114.
4522/2003	JMFC, Bhachau.	299/2003	295, 298, 114.
4525/2003	JMFC, Gondal.	872/2003	295-A, 296,298.

Criminal Misc. Application No.	Name of Court	Criminal Case No.	Offence U/s.
6967/2003	JMFC, Gondal.	1407/2003	295-A, 296, 298, 120-B.
7015/2003	JMFC, Gondal.	890/2003	295-A, 296, 298.
7016/2003	JMFC, Gondal.	919/2003	295-A, 296, 298.
7017/2003	JMFC, Gondal.	1086/2003	295-A, 296, 298, 120-B.
7471/2003	JMFC, Babra.	123/2003	295-A, 504, 500, 114.
7472/2003	JMFC, Lathi.	127/2003	295-A, 504, 500, 114.
7885/2003	JMFC, Ankleshwar.	2116/2003	295-A, 504, 500, 114.
2504/2004	JMFC, Bhavnagar.	7780/2003	295-A, 504, 500, 114.
2505/2004		241/2003	295-A, 504, 505, 506 (2), 508, 406, 114.
2506/2004	JMFC, Bhachau.	299/2003	295, 298, 114.
2507/2004	JMFC, Liliya.	64/2003	295-A, 504, 500, 114.
2508/2004	JMFC, Babra.	123/2003	295-A, 504, 500, 114.
2509/2004	JMFC, Lathi.	127/2003	295-A, 504, 500, 114.
5141/2004	JMFC, Anjar.	198/2003	295, 298 & 114.
9572/2004	JMFC, Gondal.	596/2004	120-B, 511.
9573/2004	JMFC, Gondal.	597/2004	120-B, 511.
9574/2004	JMFC, Gondal.	598/2004	120-B, 511.

3.Since most of the arguments are canvassed by the learned advocates in Cri. Misc. Application No. 6967/2003 and since in the said application, prayer was made for quashing and

setting aside the Criminal Case No. 1457/2003 wherein as many as 19 accused were impleaded out of whom some were also accused either in one or other complaints, the facts are taken from the said application for the sake of convenience.

4.It is the case of the petitioners that the complaint was filed on account of publication entitled “Ashubh” published by Divine Club, Modern Printery Graphics wherein according to the complainant, defamatory statements were made against Pujya Pandurang Shashtriji and Jayshrididi. Besides, in the publication, a copy of plaint of Suit No. 567 of 2002, the written statement filed by the defendant Nos. 1 to 3 and signed by Dhanshri Shrinivas Talvalkar and her husband Shrinivas Talvalkar and Nitinbhai, through their power of attorney, one Shri Bharatbhai Vijaybhai Bhatt on 22.11.2002 and affidavits and newspaper articles were

reproduced.

5.Civil Suit No. 567 of 2002 was filed in the Court of Civil Judge (S.D.), Ahmedabad (Rural) inter alia, by Shri Pankajbhai Hariprasad Trivedi, Suryakantbhai Narottamdas Mehta and Pradip Govindlal Shah who are impleaded as accused in almost all complaints, against Tatvagyan Vidyapith, a Regd. Trust under the provisions of the Bombay Public Trust Act and having its Registration No. E-1318 (Bombay) having its Trustees, namely, Smt. Dhanshri Shrinivas Talvarkar, Shri Shrinivas Talvarkar, Shri Nitibhai Thakkar, Shri Dashrathbhai Mahadeviya and Shri Kantibhai Pandya (Pujari), seeking declaration and permanent injunction as prayed for in the said suit, inter alia, to the effect that the plaintiffs may not be restrained from darshan of the Yogeshwar Temple situated at Bhavnirzar, Opp. ISRO, Satellite Road, Ahmedabad. The said suit was followed by

an application for injunction. The said suit was disposed of on a preliminary contention of lack of jurisdiction. The plaintiffs therein were envisaging to file proceedings before the higher Court challenging the said order.

6.Subsequently, Civil Suit No. 88 of 2003 came to be filed by Shri Suryakant Narottamdas Mehta and others against the Tatvagyan Vidyapith and its Trustees in the Court of Civil Judge (S.D.), Ahmedabad (Rural). The said suit was filed, inter alia, seeking injunction that the property situated and popularly known as Bhav Nirzar on the hill top of Satellite Road, Opp. ISRO, Ahmedabad be not sold, transferred or disposed of. The said suit was accompanied with an application for injunction and it is still pending.

7.Subsequent to filing of the aforesaid suits, in and around April 2003, a chain of criminal

complaints came to be filed against certain common group of persons who have actively been participated in the aforesaid civil suits. Such criminal complaints have been filed in the Courts of Lathi, Ankleshwar, Bhavnagar, Anjar, Una and Gondal. The applicants of all the present applications were apprehending further filing of such complaints which essentially fell within the provisions of Sections 295, 295-A, 298, 296, 500, 504 read with Sections 114 and 120-B of IPC amongst other provisions. The plain reading of these complaints makes it clear that many of the complaints are nothing but identically worded complaints, save and except the change in the name of the complainant and Court. This clearly establishes the vexatious motive in filing separate complaints at far away places, only with a view to cause undue harassment to the accused persons.

8.It appears from the averments made in the complaints that the publication of the booklet under the title 'Ashubh' is the essence of the subject matter of each of these 21 complaints that have been preferred in the State of Gujarat. The modus operandi adopted by the complainants in several other cases is to pressurize and threaten the accused persons. Around 35 to 40 complaints were also filed in the State of Maharashtra. The allegations made in the complaints are non-specific, general, too vague and are not attributed to the particular accused. The entire booklet 'Ashubh', even if it is read as a whole, it is neither defamatory, nor any motive is attributed in any manner to cause hurt to a religious feeling. The complainants do not form any group such as religious domination. Nothing stated in the alleged booklet Ashubh is either to cause outrage of religious feelings by insulting the religion or religious belief.

What the complainants are following is neither a religious domination much less a religion or a religious belief. The booklet 'Ashubh' conveys no defamatory remarks. It merely contains the transaction of the pleadings placed in the Court proceedings and hence, the same cannot be termed to be defamatory in nature.

9.Mr. R.K. Shah with Mr. K.J. Shethna, learned advocates appeared in almost all matters except Cri. Misc. Application No. 7885 of 2003 and 5141 of 2004 wherein learned advocates Mr. T.S. Nanavati, Mr. B.B. Naik with Mr. D.S. Vasavada, learned advocates appeared for the petitioners respectively. As far as respondents – original complainants are concerned, Mr. P.M. Thakkar, learned Senior advocate with Mr. H.R. Prajapati and Mr. P.J. Bhatt appeared whereas on behalf of the State of Gujarat, Mr. A.D. Oza, learned Public Prosecutor and Mr. H.L. Jani, learned

Assistant Public Prosecutor appeared.

10.In the above background of the matter, the learned advocates appearing for the petitioners have submitted that Swadhyaya parivar has several Public Charitable Trusts and their activities are confined to Charitable objects mentioned in the said Trusts. Beyond several trusts, they have no other organization. In order that a body of persons might form a class, there must be a principle of classification. It is nowhere pleaded or alleged or explained in the complaint that such class is formed. The word “Dharmic” alleged in the complaint does not fall within the purview of Sections quoted. The meaning of Swadhyaya Parivar is a family of Swadhyayees and a family cannot constitute a class. The question, therefore, of insulting the religion or the religious beliefs of a class of citizen which is the requirement of sections does not arise.

All these things having not been alleged, the complaint is liable to be quashed.

11.It is further submitted that Swadhyaya has no rituals, no fixed prayer, no binding beliefs, no declaration of faith, no oath, no condition for doing activities and no discipline by birth or otherwise. All who are engaged in self study are Swadhyayees. Swadhyayees can worship any God. There are no restrictions. It is not a class of citizens with any particular religion or religious beliefs. It is very pertinent and important and interesting to note that in the booklet, the Trustees against whose actions, suit was filed in the Court, have themselves alleged that there is no temple of Yogeshwar but only a prarthana Hall for limited number of students of Bhavnirzar. This wholly supports the submissions of the petitioners.

12.It is further submitted that outraging as

provided in Sections 295A which is not even alleged is a stronger word than wounding and the intention to outrage is malicious as well as deliberate and is directed to a class of persons and not merely to an individual. No such class is alleged. The booklet at the most shows grievance against the Trustees. It is, therefore, submitted that even if there is promotion of enmity between the followers of different religions which is not the case here does not come within the purview of this section. The complainants have not explained about any religion and class of persons. Material facts relating to offence are totally absent. The booklet does not insult any class of citizens or any religious body. The booklet is to be reviewed as a whole and the intent of the author is to be gathered from a broad perspective and not from a few solitary line or questions or heading out of context. The publisher had no malicious intention towards a

class but possibly grievance against individuals, namely, Trustees for closing down the temple.

13.It is further submitted that no offence or any ingredient thereof has been made out in any of these complaints. No jurisdiction has been shown to arise in the Courts where the complaints have been filed. The petitioners are themselves members of Swadhyaya parivar and merely because they have got some other views on the administration of the Trusts of Swadhyaya Parivar and on the manner in which the work was being done, that does not mean that so called religious feelings or beliefs of the complainants are outraged or insulted. The allegations made do not fall within the purview of the sections relied upon.

14.So far as the publication of booklet is concerned, except a bare allegation that the

petitioners have published the said booklet no material facts relating to publication have been given therein. The petitioners have no connection whatsoever direct or indirect with publication of the booklet or otherwise. The complaints refer to the booklet which pertains to some litigation in relation to the temple of Yogeshwar, Shiva Parvati and Ganesh constructed on the premises given by Government to the trust of Swadhyaya Parivar. The proceedings were in respect of the suit filed by some of the petitioners in the Civil Court in Ahmedabad. They have alleged that there was no temple of Yogeshwar visited by public whereas the trustees have alleged that there is only a prayer hall. The question raised in the booklet is whether the Bhavnirzar temple will die or whether the deities are closed in the showcase.

15.It is further submitted that Sections 295A etc. are intended to respect the religious

susceptibilities of persons of different religious pursuits. In the present group of cases, the petitioners and the complainants all are devotees of Lord Yogeshwar and the publisher wants the temple to be kept alive. The question of insulting the feeling does not arise in the least as there are no different classes and no different religions. The simple and innocent expression of opinion on the working of the trusts of Swadhyaya Pariwar will not bring the act of the publisher within the parameters of the sections in question. The difference between the persons of the same family is as to whether Bhav Nirzar temple is a temple or prarthana Hall, whether the deities are closed in showcase or to be worshiped by member of Swadhyaya Pariwar. While raising such issues, no religion is involved but only a matter of opinion as to whether the Trusts belong to Dada and Didi or they belong to public and/or whether there could be concept of

ownership in the amounts lying with the Trusts when the monies are donated over 50 years by lacs of persons for the objects of the Trusts and whether the Trusts can be run in an arbitrary and autocratic manner and whether Didi can issue directions to the effect that the persons who should have difference of opinion as to directions given by her should be suffocated and/or strangulated and/or should not be permitted to do any activities even by using violence. It is further submitted that it is the religious feelings of the petitioners and others which have been injured on account of closure of temple Bhavnirzar in Ahmedabad by the Trustees and on account of the religious feelings being injured, they filed suits against the Trustees who have closed the temple from Monday to Saturday and kept open on Sunday only. It is only because of this, several devotees were injured by that action of closing the temple for 6 days in a week. Instead of

appreciating these feelings of hundreds of devotees, false complaints were filed against the petitioners to harass them by false and frivolous complaints. None of the petitioners have ever visited places where the complaints were filed to speak about the allegations as per Section 298 of I.P.C. and there is no question of wounding the religious feelings of any person. The entire complaint is based upon Section 499 & 500 of Cr.P.C. It is nothing but camouflage and to take out the case therefrom, section 298 has been referred to in the complaint. It is clearly the case of defamation, but the defamation is of Pandurang Shashtriji, Didi and/or other Trustees and as per law, only any one of them can file a complaint under Sections 499, 500 of I.P.C. and not the present respondents. It is, therefore, submitted that looking to the averments and allegations made in the complaints, Sections 298 and 299 are not applicable to the facts of

the present case and all contentions raised therein are false and, therefore, the complaint in question is required to be quashed and set aside.

16.An affidavit-in-reply is filed by the respondent No. 1 wherein it is stated that the complaints filed by the complainants make out that the accused have committed offence under IPC. All Swadhyayees worship Lord Yogeshwar (Shree Krishna), Lord Shankar, Lord Ganpati and Goddess Parvati and all swadhyayees are having photos of such Gods and Goddess in their houses. The Photos of Gods and Goddess are the object which are held sacred by Swadhyayees. The accused, in collusion and in connivance with each other and as a part of criminal conspiracy, published and circulated/propagated the booklet in such a manner that it has injured and defiled the religious feelings of Swadhyayees and thereby insulted the religious

feelings followed by Swadhyayees. The accused, with deliberate and malicious intention of outraging the religious feelings of Swadhyayees, by doing such acts as mentioned in the criminal complaints, insulted the religions and religious beliefs of Swadhyayees. The religious feelings of other Swadhyayees are also insulted and wounded up because of the criminal act of the accused as stated in the criminal complaint. Many Swadhyayees have filed their affidavits before the Ld. JMFC, Gondal with respect to the commission of offence by the accused.

17.It is further stated in the reply that the accused persons who were interested to see that religious feelings of the Swadhyayees are insulted and wounded up and with such intention in their mind, deliberately, they published and made propaganda of such booklets. The accused have circulated such booklets in many parts of

the country and till date they are circulating. There is sufficient evidence to show that the accused are behind such printing and publication and circulation of such booklet. The irrelevant aspects about the management of Trust and its Trustees have been stated in the application which has nothing to do with the merits or demerits of the criminal complaints filed by the complainants. It is further stated that because of security and protecting the life of several Swadhyayees who are imparting educations in Agricultural College and its students and those who are residing within the area of 'Bhavnirzar', it was decided to close down the prayer hall of 'Bhavnirzar' for rest of days except Sunday. After the attack on religious place 'Akshardham' at Gandhinagar on 24.09.2002 by terrorists, office of Police Commissioner, Mumbai received a threat from terrorists on 14.10.2002 which was published in Marathi daily Newspaper 'Vartahar', according

to which name of Adarniya Dada Shri Pandurang Shastriji Aathawale was there in the hit list amongst others. There was a serious apprehension that terrorist might attack on Bhavnirzar and hence, it was decided to close down prayer hall for public at large from Monday to Saturday and it was decided to keep only the prayer hall only on Sunday with full security provided by Swadhyayees themselves. Thus, for the security purpose and with a view to save and protect the life of many students of Agricultural College, it has been decided to close down prayer hall for public at large except Sunday. Since the personal feelings of accused persons were hurt due to closing down of prayer hall of Bhavnirzar from Monday to Saturday, they started printing and publishing and propagating against Bhavnirzar and while doing so, they have crossed their limit by insulting and wounding the religious feelings of several Swadhyayees by circulating booklets

titled as 'Ashubh' and then there is a photo of Lord Yogeshwar (Shree Krishna) and then 'Bhavnirzar Mandir Nu Mrutyu'.

18.It is further stated that the complaint is not merely filed for the offence punishable under Sections 499 or 500 of IPC nor under Section 299 of IPC as stated in application. The petitioners have committed the offence under IPC and there is a prima facie material to prove the charge made against them. The criminal complaints filed by the complainants are required to be tried in accordance with law and such criminal complaints are not required to be quashed in exercise of the powers conferred under Section 482 of Cr.P.C. Since the allegations made in the complaints prima facie disclose the offences committed by the petitioners, the complaints are not required to be quashed and set aside.

19.An affidavit-in-rejoinder is also filed by some of the petitioners. The petitioner No. 1 i.e. Jagdish M. Shah has stated that there was no reply to the preliminary objection raised by the petitioners. The complaint of the complainants is per-se, bad in law and is in contravention of the provisions of Section 196 of the Code of Criminal Procedure as no permission of the Central Government or the State Government was obtained prior to filing of the said complaint under Section 295A of IPC. The learned Magistrate should have been vigilant of this preliminary requirement and should not have taken any cognizance of the same. Only on this count, the complaints are required to be quashed and set aside. Merely taking the different wordings of the Section and reproducing the same does not help the complainants to sustain their complaints. The booklet merely contains the proceedings of the Civil Suit No. 567 of 2002 in the Court of

Civil Judge (S.D.), Ahmedabad (Rural) and some press notes. Suit proceedings are in respect of closure of Bhavnirzar temple of Shri Yogeshwar. The booklet further gives publisher's name as Divine Club with which the petitioners have no connection. It also gives printer's name as Modern Printographics with which the petitioners have also no concern or association. The entire theme of the said booklet is closing down of the Temple of Bhavnirzar and the publisher's have repeatedly said at many places therein that it is the centre of their faith. According to them, Yogeshwar is God and they are devotees visiting the temple of Yogeshwar and as such, it is their right to have access to that temple. They have never meant nor they can think of disrespecting Yogeshwar or hurt anybody's feelings. On the contrary, they said that it was hurting their feeling being prevented to go to that temple. They are scared by that idea

and have expressed their fear with posing a question whether the said temple will be 'dead'? which means that by closing down of the said temple and also by denying the fact of there being any temple, will it be considered as 'dead'? At the same time, the heading of the said booklet appeals all concerned to read it with deep understanding and thinking. Filing of several complaints on the same grounds and in connection with the said booklet against some of the petitioners in different Courts goes against the rule of 'double jeopardy' under Art. 20 (2) of the Constitution of India. It is further stated that as a part of the entire false and got up story, the complainants have produced false, baseless and fabricated letters to meet their selfish end. The petitioner Nos. 10, 13 & 18 have filed their respective personal affidavits denying the fact that they have ever issued such letters. By referring to certain irrelevant

things and some paper report regarding threat to Pandurang Shastriji by terrorist group does not help the complainants nor does it justify their action of filing false, frivolous and vexatious complaints. It is further stated that the Ex-Chief Justice of this High Court Mr. B.J. Divan in his own hand-writing wrote a letter to Pandurangji (Dada) and Didi and expressed his displeasure about function and activities of Swadhyaya Parivar and tendered his resignation. The spirit of this letter was reflected on page 3 of the booklet of 'Ashubh'. It is, therefore, submitted that no offence has been committed by the petitioners.

20.The petitioner No. 10, namely, Mr. Mahesh K. Shah has also filed an affidavit stating that the alleged forwarding letter annexed with the affidavit-in-reply is absolutely false and fabricated and he has not signed the said letter. The respondent No. 1 – original

complainant is guilty of having committed offence of forgery and fabricating false evidence to cause damage to his reputation and also to give falsely the jurisdiction to JMFC, Gondal and thereby justify his complaint. The complainant is a stooge and is instigated to file false criminal complaints against the residents of Mumbai so as to harass them and to make them vulnerable to physical attacks on them at Gondal. This is out of vengeance and to take revenge.

21.An affidavit is filed by the petitioner No. 13, namely, Hitendra B. Gandhi raising more or less similar contentions and denying his signature on the alleged letter produced by the respondent No. 2 along with his affidavit-in-reply.

22.Similarly, an affidavit is filed by Shri Hemraj C. Asher, the petitioner No. 18 who is a

practicing Senior Solicitor of Bombay High Court, aged about 70 years and a Senior Partner in the Solicitors Firm M/s. Crawford Bayley & Co. It is submitted that the complainant was instigated and made to file false, baseless and frivolous complaints with a view to cause injury to his reputation in society and legal circle and also to make him run between Mumbai and Gondal hampering his professional work and also to run the risk of physical assault by muscle men when he used go to attend Gondal court. It was also alleged that this was the experience of some of the petitioners at other places. Several such false complaints have been filed against him in several courts around Gujarat on the same stereotyped and false alleged offence. He has also denied his guilt of having committed any offence and alleged that the respondents have committed forgery and fabricated false evidence to cause damage to his reputation and also to give falsely

jurisdiction to JMFC, Gondal and thereby justify his complaint. He has also requested the Court to consider the said letter, its enclosures and the envelope and on due verification to take proper and deterrent action against the respondent No. 1. It is further stated that on the face of it, it is evident that the letter is a forged one. His address was wrongly shown in that letter. It is quite unbelievable that he would write his own address wrongly. Similar is the case for other two letters also. All the letters are posted from G.P.O. While Mr. Maheshwari is staying about 30 km away from G.P.O. On examination of the letters and the envelopes and other factors connected therewith, it could be proved that the letters are fabricated with a view to rope him and others into this false complaint. The very fact that 19 responsible persons were sought to be involved itself indicates that the complaint is malafide filed.

The common target is these 19 petitioners and a few others who are likely to be beaten if they attend the Courts. In certain other complaints, advocates are unwilling to appear on behalf of some of the petitioners as they are being threatened and necessary affidavit has already been filed in this Court in concerned petitions. Since the petitioners are Swadhyayees who are dissatisfied, the question of application of Section 295A and/or 298 of IPC does not arise.

23.In support of their respective submissions, several authorities have been cited before the Court by the learned advocates Mr. K.J. Shethna, Mr. R.R. Shah, Mr. T.S. Nanavati, Mr. B.B. Nayak and others appearing for the petitioners.

24.For the purpose of canvassing the proposition that man in public life should be prepared to

face fair and bonafide criticism, reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Kartar Singh & Others V/s. The State of Punjab, AIR 1956 S.C. 541* wherein it is observed that whoever fills a public position must accept an attack as a necessary, though unpleasant, appendage to his office. Public men in such positions may as well think it worth their while to ignore any vulgar criticisms and abuses hurled against them rather than give an importance to the same by prosecuting the persons responsible for the same.

25. For the purpose of canvassing the proposition that the petitioners have not committed any offence under Chapter XV of Indian Penal Code and that conditions precedent for filing such complaints have not been fulfilled, reliance is also placed on the decision of the Hon'ble Supreme Court in the case of *Bilal Ahmed Kaloo*

V/s. State of A.P., 1997 S.C.C. (Cri.) 1094

wherein prosecution has established beyond the doubt that the appellant was spreading the news that members of the Indian Army were indulging in commission of atrocities against Kashmiri Muslims. Hence, the question before the Supreme Court was that whether those acts of the appellant would attract the penal consequences envisaged in Section 153-A or 505(2) of IPC. The Court held that the common ingredient in both the offences is promoting feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or communities. Section 153-A covers a case where a person by "words, either spoken or written, or by signs or by visible representations" promotes or attempts to promote such feeling. Under Section 505 (2), promotion of such feelings should have been done by making and publishing or circulating any statement or report

containing rumour or alarming news. The Court further held that mens rea is a necessary ingredient for the offence under Section 153-A. Mens rea is an equally necessary postulate for the offence under Section 505 (2) also as could be discerned from the words “with intent to create or promote or which is likely to create or promote” as used in that sub-section. The main distinction between the two offences is that while publication of the words or representation is not necessary under the former, such publication is sine qua non under Section 505. The words “whoever makes, publishes or circulates” used in the setting of Section 505 (2) cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, anyone who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with

Section 153-A also and then that section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction. The common feature in both sections being promotion of feeling of enmity, hatred or ill will "between different" religious or racial or linguistic" or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections. In the instant case, the appellant who has not done anything as against any religious, racial or linguistic or regional group or community cannot be held guilty of

either the offence under Section 153-A or under Section 505 (2) of IPC.

26. Reliance is also placed on the decision of this Court in the case of *Shalibhadra Shah V/s. Swami Krishna Bharti & Another, 21 G.L.R. 881* wherein it is held that under sub-sec. (1) of Sec. 196 of the Criminal Procedure Code, in the absence of a sanction from the concerned Government, no Court can take cognizance of an offence publishable under Sec. 295A of the Indian Penal Code. The obtaining of a sanction is, therefore, a sine qua non and no Magistrate can take cognizance of a complaint under Sec. 295 A unless the order granting sanction is produced. The Court further held that the offence punishable under Section 295 A of the IPC is far more serious than the offence punishable under Section 298. Section 295 A speaks of deliberate and malicious intention of outraging the religious feelings of 'any class

of citizens of India'. The use of the word 'wounding' and the use of the word 'outraging' also show that the offence under Section 295 A is far more serious than the offence punishable under Section 298. Therefore, there can be little doubt that those who complain of the commission of the offence punishable under Section 298 stand on a different footing from those who complain of the commission of an offence under Section 295 A of the IPC.

27.In support of the contention that no previous sanction either of the State or Central Government was obtained before filing complaints under Section 295-A of the Criminal Procedure Code which is of mandatory in nature, Mr. Shethna has relied on the decision of the Hon'ble Supreme Court in the case of *State of Goa V/s. Babu Thomas, 2005 AIR SCW 4845* wherein it is held that when the Special Judge took cognizance, there was no sanction order under

the law authorizing him to take cognizance. This is a fundamental error which invalidates the cognizance as without jurisdiction.

28.Mr. B.B. Naik, learned advocate appearing for the petitioners in one of these petitions has submitted that Section 295 can have no application to the case as according to the complainants, Bhavnirzar is not a religious place. In the case of *Bechan Jha and others V/s. Emperor, AIR 1941 Patna 492* it is held that a hut was standing on belagan plot of agricultural tenant, mere use of this hut without landlord's permission as public mosque with azan cannot make it place of worship within S. 295, nor can it be regarded as sacred object within S. 295 of Cr.P.C.

29.In *Joseph and others V/s. State of Kerala, AIR 1961 Kerala 28*, it is held that where the lessor has not dedicated the site or the shed

on it to the Hindu public of the locality to be used as a temple or a place of worship, the mere fact that the lessee used the same as a place of worship and permitted such user by other Hindus of locality cannot in any way prejudice the proprietary right of the lessor over the property. The privilege enjoyed by the lessee and others in making use of this shed as a prayer hall could continue only as long as the lease arrangements continued. In such a case, no valid dedication could have come into existence as a result of the unlawful act of the lessee. Such a user cannot make the place a place of worship within the meaning of S. 295.

30.In *Narayan Das and another V/s. State, AIR 1952 Orissa 149*, it is held that the essence of the offence under S. 298 consists in the "deliberate intention" of wounding the religious feelings of other persons. A mere

knowledge of the likelihood that the religious feeling of other persons may be wounded would not suffice nor a mere intention to wound such feelings would suffice unless that intention to wound was deliberate. Where the intention to wound was not conceived suddenly in the course of discussion, but premeditated, deliberate intention may be inferred. Similarly, if the offending words were spoken without good faith by a person who entered into a discussion with the primary purpose of insulting the religious feelings of his listeners, deliberate intention may be inferred. The deliberate intention has undoubtedly to be inferred from the words spoken, the place where they were addressed and other surrounding circumstances.

31.In *Chakra Behra and others V/s. Balakrushna Mohapatra, AIR 1963 Orissa 23*, it is held that to hold an accused guilty under Section 298 IPC, the prosecution must establish

affirmatively that the act was done with the deliberate intention of wounding the religious feelings of a section of the public and mere knowledge of the likelihood that the feelings of other persons might be hurt would not suffice to bring their act within the mischief of Section 298.

32.For the purpose of canvassing the proposition that the petitioners have not committed any offence under Chapter XXI of Indian Penal Code and that the complainants are not the persons aggrieved by the offences alleged against the petitioners, reliance is placed on the decision of the Bombay High Court in the case of *Balasaheb Keshav Thackeray V/s. State of Maharashtra and another, 2003 (1) Mh.L.J. 775* wherein a complaint was filed by a member of the Congress party against the chief of another political party Shiv Sena, and also the Chief Editor of the Maharashtra Daily 'Samna'

alleging defamatory statements made by him against two top leaders including the president of the party in the election meeting. The complainant claimed a right to file the complaint for the said defamation on the ground that he was a Congressman and that the leaders of the Congress Party had been defamed. It cannot be said that the Congressmen as a class is an identifiable body. Therefore, even assuming that the alleged statements were defamatory of the Congressmen, complainant was not entitled to file a complaint for the same. He was not the person aggrieved within the meaning of the term as given in Section 199 (1) of Criminal Procedure Code. He was not entitled to file a complaint for defamation against the petitioner for the alleged defamation.

33.Reliance is placed on the decision of the Hon'ble Supreme Court in the case of *G.*

Narasimhan and others V/s. T.V. Chokkappa, AIR 1972 S.C. 2609 wherein it is held that Section 198 lays down an exception to the general rule that a complaint can be filed by anybody whether he is an aggrieved person or not, and modifies that rule by permitting only an aggrieved person to move a magistrate in cases of defamation. The section is mandatory, so that if a magistrate were to take cognizance of the offence of defamation on a complaint filed by one who is not an aggrieved person, the trial and conviction would be void and illegal. The Court has further held that a defamatory imputation against a collection of persons falls within Explanation 2 to S. 499 I.P.C. But when that Explanation speaks of a collection of persons as capable of being defamed, such collection of persons must be a definite and a determinate body so that the imputations in question can be said to relate to its individual members or components.

34.Reliance is placed on the decision of this Court in the case of *Harigangaben w/o Harikishand V/s. Ali Musa Marothi and another, 1984 Cri.L.R. (Gujarat) 360* wherein the prosecution was for an offence under Section 500 in Chapter XXI of I.P.C. Section 199 of Cri.P.C. Provides that no court shall take cognizance of an offence punishable under Chapter XXI of the I.P.C. except upon a complaint made by some person aggrieved by the offence. Having regard to this provision, only the defamed person can complain to the criminal court and, therefore, only an aggrieved person, namely, the defamed person, can maintain an appeal and in such an event Section 378 (4) gives a right of seeking leave to appeal to the complainant and in an offence of defamation, the complainant could only be the aggrieved and defamed person and, therefore, no one can be substituted in his place.

35.Reliance is placed on the decision of this Court in the case of *Narottamdas L. Shah V/s. Subanali Nazarali and another, 26 (2) G.L.R. 1278* wherein it is held that where the editor of a paper writes an editorial which is highly defamatory of the spiritual head of a certain community, an individual of that community is not an aggrieved person within the meaning of Section 198 Criminal P.C. The mere fact that the feelings of the complainant have been injured in consequence of a defamatory statement made against his religious head, affords him no ground under the law to prosecute the accused for defamation.

36.Reliance is placed on the decision of this Court in the case of *Narottamdas L. Shah V/s. Patel Maganbhai Revabhai and Another, 1984 G.L.H. 687* wherein this Court has held that writing published is referable to the entire

class of lawyers. Writing does not refer to any identifiable body of persons. Writing is not in respect of any group/class of persons as distinguished from the rest of the community of lawyers. To make out an offence of defamation, the writing should be a person / persons to whom it is relatable and which can be identified and distinguished. Since the writing is not in respect of any group or class of persons as distinguishable from rest of the lawyers community, there is no offence of defamation.

37.Reliance is also placed on the decision of this Court in the case of *Pradip Madhawani, Editor of "NOBAT" Daily and Another V/s. State of Gujarat and Another, 2003 (3) G.L.R. 2489* wherein it is held that when the allegations are general in nature and they are addressed to unidentifiable mass of people, then in that case, it would not amount to defamation of a

particular class, people. In other words, when the allegations have been made against the advocates at large, it has to be treated to be allegations against an unidentifiable class of people and, therefore, the members of the Jamnagar Bar Association cannot treat the said allegations to have been aimed at them only.

38.For the purpose of quashment of the complaints under Section 482 of the Criminal Procedure Code, reliance is placed on the decision of the Hon'ble Supreme Court in the case of *State of Karnataka V/s. L. Muniswamy and Others, 1977 Supreme Court Cases (Cri) 404.* For the proposition of competence of the Court under Section 482 of the Criminal Procedure Code, the Court held that the saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a

weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

39.Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of *Raj Kapoor V/s. Laxman, (1980) 2 S.C.C. 175* wherein a complaint for an offence under Section 292, IPC

was lodged against the producer, actor, photographer, exhibiter and distributor of the film Satyam Shivam Sundaram. The Magistrate after examining some witnesses took cognizance of the offence and issued notice to the accused. The producer-appellant thereupon moved the High Court under Section 482, Cr.P.C. for quashing the proceedings on the ground that the film had been duly given 'A' certificate by the Central Board of Film Censors under the Cinematograph Act for its exhibition. The High Court having declined to quash the proceedings, the appeal has been brought before the Supreme Court contending that the film having been certified under the said Act, he was absolved in law under Section 79, IPC in exhibiting it to the public. While allowing the appeal, the Supreme Court has held that an act is justified by law if it is warranted, validated and made blameless by law. May be, there is a fine semantic shade between mere legal sanction,

which is passive, and clear legal justification which is active. For the work-a-day world of meanings, between 'permissive' and 'justificative' 'thin partition do their bounds divide'. The Court further held that if an expert body like the Board of Censors, acting within their jurisdiction and on an application made and pursued in good faith, sanctions the public exhibition, the producer and connected agencies are protected because Section 79 exonerates them at least in view of their bona fide belief that the certificate is justificatory. Thus the trial Court when it hears the case may be appropriately apprised of the certificate under the Act and, in the light of our observations, it fills the bill under Section 79 it is right for the court to discharge the accused as the charge is groundless. The Court further held that the prosecution is unsustainable because Section 79 is exculpatory when read with Section 5-A of

the Act and the certificate issued thereunder.

40. Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of *Punjab National Bank and others V/s. Surendra Prasad Sinha, 1993 Supp (1) SCC 499* wherein it is held that the judicial process should not be an instrument of oppression or needless harassment. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to

harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta.

41.Based on the aforesaid judgments and factual matrix of the complaints, the learned advocates appearing for the petitioners have strongly urged that all these complaints are required to be quashed and set aside as neither any offence as alleged has been committed by the accused nor previous sanction which is required has been obtained. The aggrieved persons have not come forward before the Court to file the complaints and at their behest and on their instigation, the complaints were filed. The

petitioners were not involved either in publication or in dispatching the booklet called 'Ashubh' nor any defamatory remarks have been made by them in any of such booklets. Taking any view of the matter, none of the offences alleged in the complaints have been committed by the petitioners and hence, all these complaints are required to be quashed and set aside.

42.Mr. P.M. Thakkar, learned Senior Counsel appearing for the original complainants and the present respondents, on the other hand, has submitted that the complainants believe in a particular ideology and any derogatory remarks made with reference to their idols can certainly affect their feelings and they are, therefore, considered to be the persons aggrieved. In support of this submission, he relied on the decision of the Hon'ble Supreme Court in the case of *John Thomas V/s. Dr. K.*

Jagadeesan, AIR 2001 S.C. 2651 wherein it is held that the question as to who can be the complainant in cases where the defamation pertains to an association of persons or a body corporate, has to be answered by reference to S. 199 of the Code. The collection of the words "by some persons aggrieved" in S. 199 of the Code definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of publication is a matter to be determined by the Court depending upon the facts of each case. If a company is described as engaging itself in nefarious activities its impact would certainly fall on every Director of the Company and hence he can legitimately feel the pinch of it. Similarly, if a firm is described in a publication as carrying on offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by it. When the imputation of

being engaged in trafficking of human kidneys is against the hospital which is a private limited company, it is too far-fetched to rule out any one of its Directors, feeling aggrieved on account of pejorative hurled at the company.

43.Mr. Thakkar has further submitted that the decision of the Hon'ble Supreme Court in the case of *G. Narsimhan and others V/s. T.V. Chokkappa, AIR 1972 S.C. 2609* helps the respondents rather than it helps the petitioners. As in that case, the Court ultimately held that this being the position in law, the question upon which these appeals must be decided is, which was the class or body in respect of which defamatory words were used and whether that body was a definite and an identifiable body or class so that the imputations in question can be said to relate to its individual components enabling an individual member of it to maintain a

complaint.

44.As far as maintainability of the complaints at different places is concerned, Mr. Thakkar relied on the decision in the case of *C. Chandrasekhar Pillai V/s. K. Karthikeyan, AIR 1964 Kerala 264* wherein it is held that the accused cannot justify a defamatory statement on the ground that such report had appeared elsewhere or that rumours to that effect were afloat. Every repetition of a libel is a new libel and each publisher is answerable for his act to the same extent as if the calumny originated from him. The publisher of a libel is clearly responsible, irrespective of the fact whether he is the originator of the libel or is merely repeating it.

45.In the case of *Harbhajan Singh V/s. The State of Punjab & Another, AIR 1961 Punjab 215*, it is held that even if the speeches and the press

news had expressly referred to the complainant and even if they had used the identical language, which had been indulged in by the appellant, the previous publication of similar imputation would have given to the accused, no protection. The accused cannot justify the defamatory statement on the ground that similar reports had appeared or by saying that rumours to that effect were afloat.

46.In the case of *P. Lankesh and another V/s. H. Shivappa and another, 1994 Cri.L.J. 3510*, it is held that where a newspaper containing a defamatory article is printed and published at one place and is circulated or sold of other places by or on behalf of the accused responsible for the printing and publishing the newspaper, then there would be publication of the defamatory article in all such other places and the jurisdictional Magistrate can entertain the complaint for defamation. It cannot be

said that the act of publication comes to an end as soon as one issue of the newspaper is released at one place. If that newspaper is despatched by the printer and publisher to other places for being sold or circulated the defamatory article gets published at each such place. Mere fact that the headquarters of a newspaper is based at a particular place or whether it is printed and published at one place, does not necessarily mean that there cannot be publication of defamatory article contained in the paper at another place. If the defamatory imputation is made available to public at several places then the offence is committed at each place. Though the first offence may be committed at the place where it is printed and first published, it gets repeated wherever the newspaper is circulated at other places.

47.Mr. Thakkar has further submitted that the

issue as to whether Swadhyay parivar is a religion or not is squarely covered by the decision of this Court in the case of *Yashwant Venilal Sanghvi V/s. Sahdevsinh Dilubha Zala* and other group matters decided on 16.08.2004 wherein apart from the above issue, many other issues were raised and were considered. The Court has considered the question of quashment of complaint under Section 482 and also discussed the law on the subject in para 52 to 57 of the judgment after citing various judgments, namely, AIR 1945 PC 18, (1982) 1 SCC 561, 1992 Supp. (1) SCC 335, AIR 1999 SC 1216 and AIR 2001 SCW 3133. The Court held that investigation as to who are the authors, printers and publishers of offending patrika is the role of the investigating agency and not the role of the Court to decide the same in exercise of powers under Article 226 of the Constitution of India. On the basis of the averments / allegations and counter averments /

allegations and even with the help of annexures filed by the petitioners this Court cannot probe into the question to come to the definite conclusion as to who are the real authors, publishers and printers of this patrika “Jagrut Parivar”. The contention of the learned Counsel of the petitioners that they also hate publication of this patrika and they also join with the complainant in condemning the trick adopted by the authors, printers and publishers of the said patrika and, therefore, they are not the authors, publishers and printers of the patrika has no merit and substance. By merely joining with the complainants whose feelings have been hurt once cannot decide the issue as to who are the authors, printers and publishers of this patrika.

48.The Court has also discussed in para 59 of the judgment as to whether the contents of the patrika published in the name of Jagrut Parivar

attracts Section 295A & 505(1)(c) of IPC and thereafter, the Court held that Sections 295 A and 505 (1)(c) of IPC are attracted. The Court found that patrika was criticizing the activities of Swadhyaya Parivar. It was also criticizing the founder of Swadhyaya Parivar as well as his successor and hence the contents of the patrika not only hurt religious feelings of the disciples and followers of Swadhyaya Parivar but also raises communal disputes of Swadhyaya Parivar which attracts the penal provisions of Section 295-A and 505(1)(c) of IPC. The Court has also held that to attract Section 295-A, it is not necessary that the person whose feelings have been hurt must belong to a particular religion. It is sufficient that he must be following a particular class whose religious belief has been hurt by the publication of religion. After considering the judgments of the Hon'ble Supreme Court reported in AIR 1983 SC 1 and AIR

1954 SC 282, the Court held that in view of the activities performed by the disciples and followers of Swadhyaya Parivar, there is no manner of doubt that they are nothing but religious activities. The meaning of Swadhyaya itself denotes that it is a religious activity and it is a sect of Hinduism. Therefore, the contention that Swadhyaya Parivar is not a religion and the activities are not religious activities and, therefore, Section 295-A cannot straightway be attracted, is untenabale and deserves to be rejected.

49.Mr. Thakkar has further submitted that the judgment of this Court was challenged by the original accused before the Hon'ble Supreme Court and the Hon'ble Supreme Court has dismissed the Special Leave to Appeal (Criminal) Nos. 5589 to 5598 of 2004 vide its order dated 03.12.2004.

50.Even with regard to exercise of power under Section 482 of the Criminal Procedure Code, Mr. Thakkar has submitted that this is not a fit case where the Court has to exercise its extraordinary powers under Section 482 of the Criminal Procedure Code. For this purpose, he relied on the decision of the Hon'ble Supreme Court in the case of *Zandu Pharmaceutical Works Ltd. and others V/s. Mohd. Sharaful Haque and another, (2005) 1 SCC 122* wherein it is held that the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are

incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.

51.After having heard learned advocates appearing for the respective parties and after having gone through the various complaints filed before the learned Judicial Magistrate's Courts in different parts of the State, memo of all these applications, affidavit-in-replies and affidavit-in-rejoinders filed before the Court and after having minutely perused the booklet in question, namely, 'Ashubh' and after having carefully considered the authorities cited before the Court by the respective parties, the Court is of the view that all these complaints mainly center round two offences, firstly the offences relating to religion. Sections

invoked in the complaints alleging such offences against the petitioners / original accused are Sections 295, 295-A, 296 and 298. All these sections fall in Chapter XV of I.P.C. and title of this chapter is of offences relating to religion. Section 295 deals with injuring or defiling place of worship with intent to insult the religion of any class. Section 295-A deals with deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs. Section 296 deals with disturbing religious assembly and Section 298 deals with uttering words, etc., with deliberate intent to wound religious feelings of any person. The allegation in the complaints against the petitioners are, inter alia, injuring or defiling the place of worship, namely, 'Bhavnirzar' with an intention to insult the religion of Swadhyaya Parivar and the ideology of Dada Pandurang Shastri and

deliberate and malicious attempts were made by the petitioners to outrage the religious feelings of the followers of Swadhyaya Parivar by insulting their religion and religious beliefs and that the petitioners have made an attempt to disturb the religious assembly of the members of Swadhyaya Parivar at 'Bhavnirzar' and by publishing and/or sending the booklet, namely, 'Ashubh', the petitioners have deliberately intended to wound religious feelings of the followers of Swadhyaya Parivar.

52.The other allegations made in the complaints are in respect of defamation of their religious leaders, namely, Dada Pandurang Shastri, Jayshri Didi and others. The sections invoked are Sections 499, 500, 504, 505, 505 (2), 505 (3), 508 and 511. All these sections fall in Chapter XXI which deals with offences of defamation. Section 499 talks of defamation whereas Section 500 talks of punishment for

defamation. Section 504 deals with intentional insult with intent to provoke breach of the peace and Section 505 (1) talks about statements conducive to public mischief. Section 505 (2) deals with statements creating or promoting enmity, hatred or ill-will between classes. Section 505 (3) deals with offences under sub-section (2) of Section 505 committed in place of worship etc. Section 508 deals with act caused by inducing person to believe that he will be rendered an object to the Divine displeasure and Section 511 talks about the punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.

53.Over and above the aforesaid sections being invoked in all or any one or other of these complaints, the respondents – original complainants have also invoked the provisions of Section 114 as well as Section 120-B of the

Indian Penal Code. They have made the allegations that the petitioners have committed the aforesaid offences and/or abetted commission of such offences. They have also alleged that all the petitioners have joined hands in commission of the above offences and they have plotted criminal conspiracy against the respondents.

54.Before the Court proceeds to deal with the alleged offences in respect of which all these complaints have been filed against the petitioners in different parts of the State, it is necessary to have a little bit background under which the aforesaid complaints were filed. During the last days of Dada Pandurang Shastri and because of his persistent ill-health, the management and administration of Swadhyaya Parivar was looked after by Jayshrididi and her husband. Differences and disputes were started. Certain independent

thinking persons and intellectuals who were very close to Dada Pandurang Shastri were disillusioned and dissatisfied and certain litigations were also cropped up. Some of the present petitioners / original accused have filed civil suits before the civil court and having been annoyed by all these developments, the criminal complaints were filed in different parts of the state. The persons against whom the suits were filed or directions were sought for have not come forward to file the complaints, but at their behest or at their instance, the followers of Swadhyaya Parivar have filed all these complaints. It, therefore, appears that all these complaints were filed as a counter blast to the civil proceedings initiated against Jayshri didi and her husband and persons who are in charge of the management and administration of the trust properties. It, therefore, appears to the Court that there was some oblique motive in filing these complaints

against the petitioners so as to prevent them from initiating and if initiated, to compel them for withdrawal of those proceedings and also preventing them from raising any disputes or criticism against the working and handling of the affairs and management of the properties of Swadhyaya Parivar.

55.The main subject matter of all the complaints is the publication and circulation of the booklet 'Ashubh'. If one will have a glance at this booklet, it contains a title on the front page. Thereafter, it gives a picture of Lord Maheshwar and then a question is put whether Bhavnirzar temple dies ? The contents of this booklet are nothing but the reproduction of certain newspaper cuttings, proceedings of R.C.S. No. 567 of 2000 filed in the Court of learned Civil Judge (S.D.), Ahmedabad (Rural) and other letters, poems etc. and on the last page, a questionnaire is put to get answers

from the followers of Swadhyaya Parivar in respect of the activities going on in Bhavnirzar. The moot question which arose before the Court is as to whether by publication and/or circulation of this booklet, the alleged offences were committed or the persons named therein are defamed. The Court while exercising its power under Section 482 of the Criminal Procedure Code is not supposed to go into detailed analysis or examination of all these charges, especially when the complaints are pending before the Court and evidences are yet to be taken. It is, however, the duty and function of the Court to see as to whether all these offences alleged against the petitioners can remotely be termed as offences, whether the complaints have been genuinely and bonafide filed or whether they have been filed for achieving some ulterior motives. The Court is also supposed to examine these complaints from the angle as to whether the forum of the

criminal court has been used by the respondents only with a view to cause harassment or intimidation to the petitioners.

56.Keeping the above parameters in mind, the Court, first of all, takes up the issue of maintainability of the complaints and quashing thereof on this preliminary ground alone. The filing of complaints for an offence under Section 295-A of IPC, per se, appears to be bad in law as it is in contravention of the provisions of Section 196 of Cr.P.C. Section 196 (1) says that no court shall take cognizance of any offence punishable under Chapter VI or under section 153-A [section295-A or sub-section (1) of Section 505]of I.P.C..... except with the previous sanction of the Central Government or of the State Government. In the present case, admittedly, before filing of the complaints, no previous sanction of the Central Government or of the State Government

is obtained. Making of an application or pending this issue before the appropriate Government for its sanction has no answer to justify the filing of the complaints.

57.One more ground against maintainability of the complaints was raised by the petitioners. Offences of defamation are alleged against the petitioners. However, the persons said to have been defamed have not come forward before the Court. Section 199 of Cr.P.C. states that no person shall take cognizance of an offence punishable under Chapter XXI of I.P.C. except upon a complaint made by some person aggrieved by the offence. Whether the complainants who have filed complaints are said to be the persons aggrieved by the offence is a question which is paused before the Court. Admittedly, the whole text and tenor of the booklet 'Ashubh' seems to be in respect of handling of the affairs and management of properties of

Swadhyaya Parivar by Jayshrididi, her husband and other persons. None of them have come forward before the Court and filed the complaints. The Court is not convinced with the plea that the complaints are filed by the persons who are said to be the followers or devotees of Swadhyaya Parivar and since the Swadhyaya Parivar itself is a separate and identifiable entity and allegations were made against the Swadhyaya Parivar, the complainants are entitled to file the complaint on behalf of Swadhyaya Parivar or their idols. Keeping in mind this issue, the settled legal position and considering the various judicial pronouncements on the subject which have already been referred to earlier, the Court is of the view that there is no justifiable reason to believe these persons as the persons aggrieved by the offences alleged. There is nothing against the complainants in the booklet. No allegations are made against the Swadhyaya Parivar as a whole.

A fair and a bonafide criticism is made against the persons who are in charge of the affairs of Swadhyaya Parivar and it is also by way of reproduction of some articles or some proceedings before the Court. If at all any grievance can be raised against those allegations, it can be raised only by the persons in whose name and against whom such allegations are made. The Court is, therefore, of the view that the complaints filed by invoking Sections 499, 500 etc. for the offences punishable under Chapter XXI of I.P.C. are not maintainable and the learned Judicial Magistrates are not right in taking cognizance of such offences.

58.So far as other offences under Sections 295, 295-A, 296, 298 etc. are concerned, all these offences are in relation to religion. Here the question arises as to whether Swadhyaya Parivar can be said to be a religion. It is true that

this issue has come up before this Court earlier and this Court has taken the view that Swadhyaya Parivar is a religion. However, looking to the facts which have been found on record of the present proceedings, it becomes clear that in the civil court, the Trustees have themselves taken the stand which hardly justifies their claim that Swadhyaya Parivar is a religion. Bhavnirzar is not a place of worship, it is a school imparting education. If the complainants or their idols themselves say that Swadhyaya Parivar is not a religion, it is very difficult for this Court to hold that Swadhyaya Parivar is a religion. Even otherwise, decision rendered by this Court in earlier proceedings is not applicable looking to the facts of the present case as in the earlier proceedings, the booklet was totally different. It was “Jagrut Patrika” whereas in the present case, it is 'Ashubh'. No such plea was raised before the Court in the earlier

proceedings that the Trustees have themselves said that there is no temple of Yogeshwar but only a Prarthana Hall for limited number of students of Bhav Nirzar. If Swadhyaya Parivar is not a religion propagating, preaching and practicing values of any particular religion and it is borne out from the pleadings of the Trustees themselves, in that case, Swadhyaya Parivar cannot be said to be a religion and if it is not a religion, the provisions under Sections 295, 296, 298 etc. are not applicable and hence, it cannot be said that any offence relating religion has been committed by the petitioners.

59.The only question which remains to be decided is now as to whether the Court has to exercise its power under Section 482 of Cr.P.C. for quashing and setting aside the complaints. Section 482 says that nothing in this Code shall be deemed to limit or affect the inherent

powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. There are guiding principles which are laid down in this Section. If any one has abused the process of any Court, the High Court is empowered to prevent such an abuse. The Court has already come to the conclusion earlier that the complaints are not genuinely or bonafide filed. It appears that the complainants were either motivated or instigated to file these complaints in different parts of the State. The necessary formalities have also been not observed before filing of these complaints. Neither sanctions were obtained nor persons aggrieved have come forward to file these complaints. Though one and the same booklet is the subject matter of all these complaints, instead of filing the complaints at one place, such complaints were

filed at different places. The only intention appears to be to cause harassment to the persons who are themselves Swadhyayees, closely associated with the ideology of Dada Pandurang Shastri and are men of repute and command respect in the Society. Simply because, their little bit of protest or objections were not liked by the persons who are in charge of the affairs of Swadhyaya Parivar, the complaints were filed against them. The Court is, therefore, of the view that it is nothing but the abuse of process of the criminal court and hence to prevent such an abuse, the complaints are required to be quashed and set aside. The other guiding principle which is laid down is to secure the ends of justice. It is true that the Court will exercise its power in rarest of rare case under Section 482 of Cr.P.C. But when the question is of securing the ends of justice, the Court would not feel shy or be reluctant to exercise such power. If

complaints are filed in this manner and that too, for some oblique motive and if such complaints are allowed to be proceeded with, the persons against whom such complaints are filed will have to undergo a lengthy trial and it would add to their mental tortures, agonies and sufferings. If the Court is prima facie satisfied that such complaints are not maintainable at all, nor it would result into a conviction or there is no slightest possibility of such conviction, for the purpose of securing the ends of justice, the Court would certainly interfere at the stage where the proceedings are challenged before the Court.

60.In the case of *Madhavrao Jiwaji Rao Scindia and Anr. vs. Sambhajirao Chandrojirao Angre and Ors., reported in AIR 1988 SC 709*, the Hon'ble Supreme Court has held that the legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test

to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where, in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage. Here in the present case, the Court finds special features and hence thought it just and proper not to permit the prosecution to continue. The Court is also of the view that the forum of Criminal Court is

utilised by the complainants for an oblique purpose and to pressurise the petitioners for withdrawal of their cases or for restraining them from raising the issues against their way of handling the affairs of the Swadhyaya Parivar. Be that as it may, circumstances do not warrant to prosecute the petitioners who at the most can be said to be fair and bonafide critics and especially when they have not played any active role in the alleged commission of offences.

61.Taking overall view of the matter, considering the entire facts and circumstances of the case and objectively appreciating the submissions made by the parties, the Court is of the view that this is the fit case where the Court has to exercise its inherent jurisdiction under Section 482 of the Criminal Procedure Code and quash the complaints. Accordingly all these complaints are hereby quashed and set aside.

All these applications are allowed. Rule is made absolute in each of these applications without any order as to costs.

62.In view of the aforesaid judgment and order, Criminal Misc. Application No. 1348 of 2004 does not survive and it is accordingly disposed off.

63.Office is directed to place copy containing, at least, an operative part of this judgment and order in each of these applications.

64.At this stage, Mr. R.K. Shah, learned advocate appearing for the petitioners has submitted that the petitioner No. 1 in Cri. Misc. Application No. 4525 of 2003 and petitioner No. 5 in Cri. Misc. Application No. 6967 of 2003 i.e. Mr. Suryakant Narottamdas Mehta has expired and he has already filed a note before this Court on 01.03.2006. However, the said

note has not been placed before this Court and hence, when the matter is kept today for pronouncement of judgment, he has put this fact to the notice of this Court. Accordingly, these facts are taken on record. Though the complaints are now quashed, even otherwise, because of the death of the said Shri Suryakant Narottamdas, the said two complaints wherein he was accused, stand abatted qua him.

[K.A. PUJ, J.]

S*avariya*